IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8221 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 - Yes; 3 to 5 - No

ISMAIL IBRAHIM PANDOR, THRO' PAH BAI MARIAM SULEMAN PANDOOR

Versus

OFFICER ON SPL.DURY,LAND ACQUISITION UNIT III

Appearance:

MR PRANAV G DESAI for Petitioners

MR UDAY BHATT, ASSTT. GOVT. PLEADER for Respondent Nos. 1 & 2.

MR SN SHELAT for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 17/12/97

ORAL JUDGEMENT (Per: C.K.Thakkar, J.)

This petition is filed by the petitioners for a Writ of Mandamus and/or any other writ, direction or order quashing and setting aside the order Annexure "L"

dated August 8, 1988 passed by the Officer on Special Duty, Land Acquisition No.III, Ahmedabad, respondent no.1 herein, and by directing him to make a reference in the cases of the petitioners to a competent court of law under Sec.18 of the Land Acquisition Act, 1894 (hereinafter referred to as `the Act') in respect of award Annexure "I" dated March 27, 1986.

2. It was the case of the petitioners that they were occupants of land situated at Village Bhadkodra, Taluka Ankleshwar, District Bharuch. Gujarat Industrial Development Corporation, respondent no.3 herein, (`Corporation' for short) intended to acquire land in question belonged to the petitioners alongwith some other lands for public purpose, i.e. for Narmada Project for construction of Sectional Colony, Store and quarters of Channel Division 2/2 Bharuch and for said purpose, a notification was issued under Sec.4 of the Act on September 24, 1981. Notices were issued to the petitioners, pursuant to which they filed objections. Finally a notification under Sec.6 was issued on December 13, 1983 which was published on January 19, 1984. It was the case of the petitioners that since they were not paid proper compensation to which, they were entitled, they made an application to make reference to a competent court under Sec.18 of the Act but the same was rejected on the ground that there was an agreement between the parties and, hence, no reference could be made to a court. It is this order which is challenged in the present petition.

3. It appears that earlier, petitions were filed in this Court, being Special Civil Application Nos.4293 and 4294 of 1985 wherein a complaint was made that inspite of issuance of notifications under Secs.4 and 6, no award was declared for long. This Court issued notice pursuant to which respondents appeared and a statement was made that within the stipulated period, an award will be made. On that statement, the petitions came to be disposed of and the notices were discharged. When the Corporation came to know about that fact,it filed two petitions being Special Civil Applications Nos.5572 of 1985 and 5573 of 1985 wherein a grievance was made that there was suppression of material fact on the part of the petitioners in filing Special Civil Applications nos.4293 and 4294 both of 1985 and the Court disposed of those petitions on the statement made on behalf of the authorities that award will be declared. A grievance of the Corporation was that it was because of suppression of material fact on the part of the petitioners that the above statement came to be made on behalf of the

Corporation. There was, however, an agreement between the parties, and, hence, there was no question of declaration of award under sub-sec.(1) of Sec.11 of the Act as the case was covered under sub-sec.(2) of Sec.11 of the Act. Considering the facts and circumstances of the case, the Division Bench (Coram: S.B.Majmudar & I.C.Bhatt, JJ.) on December 26, 1985 disposed of the petitions and inter alia observed as under:

> "In response to the notice issued in these petitions, the concerned lands owners have appeared through their learned counsel. It is submitted on their behalf that such agreements were not entered into. In our view, this controversy raises a pure question of fact which is of highly disputed nature. It cannot be resolved in the present proceedings under Article 226 of the Constitution. As provided by Sec.11(2) of the Act, it is for the Collector to be satisfied that there was such binding agreement between the parties and then he has to pass award in that light. The learned counsel for the petitioners submits that the acquiring body viz. the present petitioner have already taken up such contention before the land acquisition officer. In these circumstances, the only proper order which can be passed in these proceedings in that the land acquisition officer while deciding the question whether award should be declared on merits will also consider the contention of the acquiring body viz. the petitioner whether there was any binding agreement between the parties and whether the award is to be declared under section 11(2) of the Act pursuant to the alleged agreement. IF the Collector is satisfied that there was any such agreement, then only the question of passing award under section 11(2) would arise, otherwise, he will have to decide the matter purely on merits and declare the award in accordance with law under section 11(1) of the Act. The earlier order passed by this Court will have to be read in the light of the present directions and clarification. As by the earlier orders, time to declare the award was given upto 29-12-1985 in one matter i.e. Special Civil Application No.5572 of 1985, in the interest of justice, the said time is extended upto 10-1-1986."

4. In pursuance of the above observations, the Land Acquisition Officer again passed an order on March 27,

1986 wherein it was observed that the case on hand was covered by sub-sec.(2) of Sec.11 of the Act and not by sub-sec.(1) thereof and hence, there was no question of making reference to a competent court. In the light of the observations made by this court, the Land Acquisition Officer observed that in the instant case an agreement was arrived at between the parties pursuant to which the amount was determined, part payment was made and possession was also handed over to the Corporation. It was further observed that necessary Kabulatnamas were executed by the claimants. A prayer for additional amount, therefore, cannot be entertained and since the application was not maintainable, no order can be passed for making reference to a competent court. In accordance with the said finding, the Special Land Acquisition Officer issued a communication to the petitioners on 8th of July/August, 1986 stating therein that their application to make reference was not competent and could not be entertained. It was further stated that the remaining amount which the claimants had not collected might be collected and for that purpose, they might approach the office of Mamlatdar, Ankleshwar. In the light of the order passed by the Land Acquisition Officer and communication in July/August, 1986, the petitioners have filed this petition by invoking Article 226 of the Constitution of India.

5. We have heard Mr.P.G.Desai, learned counsel for the petitioners, Mr.Uday Bhatt, Asstt. Government Pleader for respondents nos.1 and 2 and Mr.S.N.Shelat, learned counsel for respondent no.3 Corporation. On behalf of respondent no.3 Corporation, an affidavit was filed by the Manager (Law and Inquiry) inter alia stating that a bona fide agreement was arrived at between the parties without any duress or coercion. On the basis of the said agreement, amount of compensation was determined and part payment was already made. According to the deponent, the Corporation had always adopted conciliatory approach towards the land holders whose lands were subject matter of acquisition and in pursuance of the agreement entered into between the parties, possession was handed over to the Corporation by the owners and occupiers and that advance payment of about 85% of the agreed amount was already made at that time. It was specifically denied that signatures were taken on blank papers as alleged. There was no duress, no coercion or mis-representation as alleged by the petitioners. The action taken by the Corporation was in consonance with law. Hence, by rejecting the application for reference the respondent Land Acquisition Officer has not committed an error of law which is required to be corrected by exercising

extraordinary jurisdiction under Article 226 of the Constitution of India.

6. Mr.Desai submitted that it was incumbent upon the Land Acquisition Officer to make reference when a grievance was made that the amount of compensation determined by Land Acquisition Officer was not acceptable to the owners and/or occupiers. He has no power, authority or jurisdiction to decide as to whether the amount determined was proper and/or sufficient or not. He further submitted that it was not true that there was an agreement between the parties and as per such agreement, the amount was determined and part payment was made. According to him, signatures were taken under duress and/or coercion on some papers and the said fact could not come in the way of the petitioners in getting an amount of compensation in accordance with law.

7. It is also submitted that even if the contentions of the respondent Corporation are accepted in the light of the decisions of the Supreme Court in Ishwarlal Premchand Shah and others etc. Vs. State of Gujarat, AIR 1996 S.C. 1616, State of Gujarat Vs. Daya Shamji Bhai, etc., AIR 1996 S.C. 133 and Abdul Aziz Abdul Razak and another Vs. Municipal Corporation of Greater Bombay, AIR 1996 S.C. 1350, at the most reference under sub-sec.(1) of Sec.23 would not be maintainable. But a reference for the dispute in connection with the amount falling within sub-sec.(1A) and sub-sec.(2) of Sec.21 would be maintainable.

8. In this connection, our attention was invited by the learned counsel to the observations of the Supreme Court in Daya Samji Bhai wherein it was mentioned that where a contact (agreement) is made between the parties, a Civil Court is devoid of jurisdiction to go into the adequacy of compensation awarded by the Collector or prevailing market value as on the date of notification under Sec.4(1) to determine compensation under Sec.23(1) and to grant statutory benefits. The contention is that according to law laid down by the Hon'ble Supreme Court, what is not competent in view of a consent agreement under sub-sec.(2) of Sec.11 is reference under sub-sec.(1) of Sec.11 and not under sub-sec.(1A) or sub-sec.(2). The counsel contended that even if an agreement is present and consent award is made under Sec.11(2), an aggrieved party can always ask the Land Acquisition Officer to make reference for his rights in accordance with the provisions of Sec.23(1A) and Sec.23(2) of the Act.

9. We are afraid we cannot uphold the contention of the learned counsel. In no uncertain terms, Hon'ble Supreme Court held that reference is not competent and civil court is devoid of jurisdiction to go into adequacy of compensation in case of consent award. In our considered opinion, Mr.Shelat is right in relying upon the observations of the Apex Court in Ishwarlal Premchand Shah. In that case, it was contended by the claimants that they were entitled to "payment of solatium, interest and additional benefits payable under the Act". The said contention, however, was negatived by the Hon'ble Supreme Court.

10. We are bound by the decisions of the Supreme Court. Moreover, in our opinion, it stands to reason that such a reference would not be competent. Sec.23 provides that when a determination takes place and a person aggrieved by an offer made by the Land Acquisition Officer may seek reference which is obviously under sub-sec.(1) of Sec.11 of the Act. Once an agreement is arrived at between the parties and award is made under Sec.11(2), there was no question of determination under sub-sec.(1) of Sec.11 and no reference would be competent thereafter.

11. Finally, Mr.Desai argued that looking to the order passed by the Land Acquisition Officer, it is clear that he has not decided anything nor he has applied his mind and has mechanically reproduced the observations made by a Division Bench in earlier two petitions and rejected the applications. Hence, the order passed by him is vulnerable and deserves to be quashed and set aside.

12. Mr.Shelat, on the other hand, submitted that from the documentary evidence, it is clear that there was an agreement between the parties. Said agreement was executed by the petitioners in accordance with law which was acted upon and in pursuance thereof part payment was made. He further submitted that looking to the order in its entirety it is clear that the Land Acquisition Officer after application of mind and in the light of observations made by the Division Bench held that the case was covered by sub-sec.(2) of Sec.11 of the Act and not by sub-sec.(1) of Sec.11 and accordingly, the prayer to make reference was negatived. He also drew our attention to various paras of the order in which it was specifically stated that while rejecting the application of the petitioners, the Officer has observed that there was an agreement pursuant to which payment was made.

Thereafter it was not open to the claimants to seek reference to the competent court.

13. In our opinion, none of the contentions raised by Mr.Desai appears to be well founded. Looking to the provisions of sub-sec.(2) of Sec.11 of the Act, it is clear that once the authority is satisfied that there was an agreement between the parties pursuant to which payment or part payment was made, it is not open to the party to rely on sub-sec.(1) of Sec.11 of the Act. By not granting prayer to make reference, the Land Acquisition Officer has not committed any error of law. Looking to the order passed at Annexure "I" on March 27, 1986, to which our attention was drawn, it is clear that not only the Land Acquisition Officer has referred to the observations made by a Division Bench in earlier petitions but on his own also, he considered the facts and circumstances and was satisfied that there was an agreement pursuant to which possession was handed over and thus the case was covered by sub-sec.(2) of Sec.11 of the Act. If it is so, obviously, it cannot be said that by not granting the prayer of the petitioners of making reference any illegality can be said to have been committed. Our attention was also invited to a Special Civil Application No.6756 of 1986 and companion matters decided by a Division Bench on July 9-10, 1996 wherein almost an identical question arose before the Division Bench of this Court and after referring various decisions of this Court as well as of the Apex Court, the Division Bench held that scope of sub-sec.(1) and sub-sec.(2) of Section 11 are different and once the case falls under sub-sec.(2) of Sec.11 of the Act, there was no question of making reference as the award would be a consent award. In this case also, the award is consent award and the Land Acquisition Officer was perfectly justified in basing his decision on such amount. By not granting the prayer of making the reference, therefore, no illegality has been committed. We, therefore, do not see any reason to interfere with the said order. Petition is dismissed. Rule is accordingly discharged. No order as to costs.

Sd/-

(C.K.Thakkar,J.)

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(R.P.Dholakia,J.)

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